



June 8, 2001

Mr. John M. Renfrow  
Assistant County Attorney  
Harris County  
P.O. Box 920975  
Houston, Texas 77292-0975

OR2001-2416

Dear Mr. Renfrow:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148169.

The Harris County Appraisal District (the "district") received a request for the unredacted applications of two district Appraisal Review Board ("ARB") members. You state that the requestor agreed to inspect a redacted version of the applications. You claim, however, that the redacted portions of the applications are excepted from disclosure pursuant to section 552.117 of the Government Code. We have considered the exception you claim and have reviewed your arguments. We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may make comments stating why information should or should not be released).

Initially, we note that the district failed to comply with the requirements of section 552.301 of the Government Code. Section 552.301 provides that a governmental body must submit to the attorney general a copy of the written request for information. *See* Gov't Code § 552.301(e)(1)(B). You did not, however, submit a copy of the written request for information. When a governmental body fails to comply with section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). A governmental body must demonstrate a compelling reason why the information must be withheld from disclosure to overcome this

presumption. *See* Gov't Code § 552.302. Normally, a compelling reason is that the information is confidential by law or a third party's interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Since section 552.117 of the Government Code provides a compelling reason to overcome the presumption of openness, we will address your claims under that exception. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). Section 552.024 of the Government Code provides:

(a) Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body that relates to the person's home address, home telephone number, or social security number, or that reveals whether the person has family members.

(b) Each employee and official and each former employee and official shall state that person's choice under Subsection (a) to the main personnel officer of the governmental body in a signed writing no later than the 14th day after the date on which:

- (1) the employee begins employment with the governmental body;
- (2) the official is elected or appointed; or
- (3) the former employee or official ends service with the governmental body.

(c) If the employee or official or former employee or official chooses not to allow public access to the information, the information is protected under Subchapter C.

(d) If an employee or official or a former employee or official fails to state the person's choice within the period established by this section, the information is subject to public access.

(e) An employee or official or former employee or official of a governmental body who wishes to close or open public access to the information may

request in writing that the main personnel officer of the governmental body close or open access.

Gov't Code § 552.024. You have submitted to us an "Election on Disclosure" form for each of the two ARB members, as well as a note attached to one of the forms that reflects that one of the ARB members changed her election. You argue that these forms and the attached note reflect that the ARB members properly elected to withhold their home addresses and telephone numbers from public disclosure.<sup>1</sup> We note that an election under section 552.024 need not be in a special form. An election is valid as long as the governmental body can discern the identity of the employee and the nature of that election. *See* Open Records Decision No. 530 (1989); *see also Stork v. State*, 23 S.W.2d 733, 735 (1929) (finding document signed when facts show name affixed by officer or under his immediate authority and direction and in his presence). After reviewing the submitted information, we conclude that the ARB members elected to withhold their home addresses and phone numbers under section 552.024.

Next, we examine whether the ARB members timely elected to withhold their section 552.117 information. In Open Records Decision No. 530 (1989), we stated that a governmental body may only withhold the section 552.117 information of those current or former employees who made their section 552.024 elections before the governmental body received the written request for information. *See* Open Records Decision No. 530 at 5 (1989). You state that you received the request for information on March 27, 2001. You also state, and submitted documentation attesting to the fact, that both ARB members made their elections prior to the district's receipt of the request for information. In this instance, it appears that the ARB members, therefore, timely complied with section 552.117(1) of the Government Code.

The requestor argues, however, that since the members made their elections more than 14 days after they were appointed to the ARB, they lost their right under section 552.024(d) to make an election. This office addressed this issue in Open Records Decision No. 530 (1989). In that ruling, we stated that "[i]t is not mandatory that a public employee take action [within 14 days]; but if the employee does not, the employee's home address and telephone number will be subject to public access." *Id.* at 3 (referencing section 552.024(d) of the Government Code). Although we admitted that the language of section 552.024(d) seems to make an employee's election irrevocable, we noted that an employee may close or open access to section 552.117 information under section 552.024(e). *See id.* We harmonized these two subsections of section 552.024 by interpreting subsection (e) as a method of allowing an employee hired before the effective date of section 552.024 the ability to avail himself of the protections of section 552.024. If section 552.024(a) was interpreted to require employees

---

<sup>1</sup>We note that the district's form does not allow its employees to elect to withhold their family member information. *See* Gov't Code § 552.117 (allowing employees to withhold four categories of personal information.)

to make their election no later than 14 days after they were hired, then employees hired before the effectiveness of section 552.024 could not take advantage of its protection, since the 14 day time period would have past. *See id.* Thus, we clarified that employees could make an election under section 552.024 outside of the 14 day time period. However, if they failed to elect, their 552.117 information would be subject to public access. *See id.; see also* Gov't Code § 552.024(b), (d). Although, in this case, the ARB members made their election of confidentiality after 14 days of their appointment to the ARB, their elections were made before the governmental body received the request for information. Thus, we conclude that the elections were timely and that the members home addresses and phone numbers must be withheld under section 552.117(1).

We have enclosed a copy of Open Records Decision No. 530 (1989) for the requestor's review. If the requestor has additional questions concerning this letter ruling or Open Records Decision No. 530 (1989), we encourage him to contact the Open Government Hotline toll-free at 1 (877) OPENTEX.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

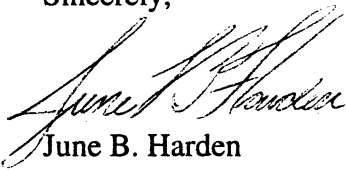
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/RJB/seg

Ref: ID# 148169

Encl. Submitted documents

cc: Mr. Robert L. Townsend  
20402 Water Oak Hill Drive  
Spring, Texas 77388-5484  
(w/ enclosure)